

2006 No. 436

HIGH COURT OF JUSTICIARY

SHERIFF COURT

DISTRICT COURTS

**Act of Adjournal (Criminal Procedure Rules Amendment No. 4)
(Miscellaneous) 2006**

Made - - - - - *22nd August 2006*

Coming into force - - - - - *1st September 2006*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(a), and of all other powers enabling them in that behalf, with the consent of the Scottish Ministers, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 4) (Miscellaneous) 2006 and shall come into force on 1st September 2006.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 20.3A (sexual offences to which Part 2 of the Sexual Offences Act 2003 applies)(c)—

(a) after paragraph (3) there shall be inserted—

“(3A) Where sentence has been deferred in respect of an accused who has been given a notice required by paragraph (2), the clerk of the court shall, when sentence is passed, give the accused a notice in Form 20.3A–C.”; and

(b) in paragraph (4)—

(i) for “the notice” there shall be substituted “any notices”;

(ii) after “accused” there shall be inserted “under paragraph (3) or (3A), as the case may be”; and

(iii) for “that copy” there shall be substituted “those copies”.

(a) 1995 c.46.

(b) S.I. 1996/513, last amended by S.S.I 2006/302.

(c) Rule 20.3A was inserted by S.I. 1997/2082 and amended by S.S.I. 2004/206.

- (3) In rule 31.1 (interpretation of Chapter 31: references to the European Court of Justice)—
- (a) in paragraph (1), for the definition of “question” there shall be substituted the following:—
- ““question” means a question or issue in respect of which the European Court has jurisdiction to give a preliminary ruling under the Community Treaties”;
- (b) paragraph (2) shall be omitted;
- (4) In rule 31.2 (notice of references in solemn proceedings)—
- (a) in paragraph (1)—
- (i) for “trial” there shall be substituted “preliminary hearing or first diet”; and
- (ii) after “place” there shall be inserted “, as the case may be,”;
- (b) in paragraph (2), for “trial diet” there shall be substituted “preliminary hearing or first diet, as the case may be”.
- (c) paragraph (3) shall be omitted.
- (5) In rule 31.5 (preparation of case for reference), for paragraph (3) there shall be substituted the following:—
- “(3) In preparing a reference, the parties shall have regard to guidance issued by the European Court.”.
- (6) For Rule 41.3(1) (declaration of incompatibility)(a) there shall be substituted the following:—
- “(1) Where in any proceedings a party seeks a declaration of incompatibility or the court is considering whether to make such a declaration at its own instance—
- (a) notice in Form 41.3–A shall be given as soon as reasonably practicable to such person as the Lord Justice General may from time to time direct—
- (i) by the party seeking the declaration; or
- (ii) by the clerk of court,
- as the case may be, provided that there shall be no requirement to give such notice to a party or to the representative of a party; and
- (b) where notice is given by the party seeking the declaration the party shall lodge a certificate of notification in process.”.
- (7) After Chapter 49 (financial reporting orders)(b) there shall be inserted the following:—

“CHAPTER 50

FOOTBALL BANNING ORDERS

Interpretation

50.1. In this Chapter—

“the 2006 Act” means the Police, Public Order and Criminal Justice Act 2006(c);

“football banning order” means an order made under section 51(2) of the 2006 Act;

“football banning orders authority” has the meaning given in section 69 of the 2006 Act.

Football banning orders

50.2. A football banning order shall be in Form 50.2.

(a) Chapter 41 was inserted by S.S.I. 2000/315.
 (b) Chapter 49 was inserted by S.S.I. 2006/205.
 (c) 2006 asp 10.

Variation or termination of football banning orders

50.3.—(1) An application for the variation or termination of a football banning order shall be made by petition in Form 50.3.

(2) On a petition referred to in paragraph (1) being lodged, the court shall—

(a) order intimation of the application to—

(i) in the case of an application by the person subject to the order, the football banning orders authority; or

(ii) in any other case, to the person subject to the order;

(b) appoint a hearing on the application; and

(c) order intimation of the hearing to the persons referred to in sub-paragraph (a) and to the governor of any institution in which the person in respect of whom the football banning order was made is detained.”.

(8) In the appendix—

(a) in Form 20.3A–B(a), in the paragraph beginning “These requirements” at the end there shall be inserted—

“[or for such period as shall be notified to you when you are sentenced in respect of the offence]”;

(b) after Form 20.3A–B there shall be inserted the Form 20.3A–C set out in Part 1 of the Schedule to this Act of Adjournal;

(c) in Form 41.3–A(b)—

(i) after “not to” there shall be inserted the following:–

“[or: That (*specify party*) is seeking that the court]”; and

(ii) after “Deputy Principal Clerk of Justiciary” where it second appears there shall be inserted the following:–

“[or Solicitor [or Agent] for (*specify*)]”.

(d) For Form 41.4(c) there shall be substituted the form set out in Part 1 of the Schedule to this Act of Adjournal.

(e) After Form 49.3 there shall be inserted the forms set out in Part 2 of the Schedule to this Act of Adjournal.

(9) The annex (notes for completion of Form 31.5)(d) shall be omitted.

A C Hamilton
Lord Justice General
I.P.D.

Edinburgh
22nd August 2006

(a) Form 20.3A–B was substituted by S.S.I. 2004/206.
(b) Form 41.3–A was inserted by S.S.I. 2000/315.
(c) Form 41.4 was inserted by S.S.I. 2000/315.
(d) The annex was inserted by S.S.I. 1999/1282.

SCHEDULE

Paragraph 2(8)(b)

Part 1

FORM 20.3A-C

Form of notice of duration of notification period under Part 2 of the Sexual Offences Act 2003

Case No.

You were given notice of the notification requirements which you must comply with under Part 2 of the Sexual Offences Act 2003 on [*date notice given*]. Those requirements apply to you from [*date of conviction or finding*] and shall continue to apply for 5 years [*or for 7 years*] [*or for 10 years*] [*or for the duration of your probation order*] [*or indefinitely*].

Part 2

FORM 41.4

Rule 41.4

Form of minute under Rule 41.4

IN THE HIGH COURT OF JUSTICIARY

MINUTE

By

[A.B.] (*designation and address*)

in

HER MAJESTY'S ADVOCATE

against

[C.D.] (*address or Prisoner in the Prison of (place)*)

1. The Minuter lodged a Notice under section 5(2) of the Human Rights Act 1998 on (*date*).
2. The position of the Minuter as to the proposed declaration of incompatibility is as follows:–

(here specify the position of the Minuter including where appropriate a summary of any facts on which the Minuter proposes to rely, of any propositions of law which the Minuter proposes to advance and of any argument which the Minuter proposes to make.)

(Signed)

Solicitor for (specify Minister or other person)

Part 3

FORM 50.2

Rule 50.1

Form of football banning order
FOOTBALL BANNING ORDER

COURT:

DATE:

OFFENDER:

Address:

Date of birth:

THE COURT, sentencing or otherwise dealing with the offender in respect of an offence to which section 51(4) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the 2006 Act”) applies;

AND being satisfied that there are reasonable grounds to believe that making the football banning order would help to prevent violence or disorder at or in connection with any football matches;

AND having explained to the offender the effect of this order (including the requirements set out below);

ORDERS that the offender shall report at the police station at [*state address of police station*] within 5 days beginning with the day on which this order is made;

AND ORDERS that during a period of (*specify length of period*) from the date of this order the offender shall—

1. be prohibited from entering any premises for the purposes of attending any regulated football matches(a) in the United Kingdom;

2. report at a police station in accordance with Chapter 1 of Part 2 of the 2006 Act in connection with regulated football matches outside the United Kingdom;

3. where a relevant event as specified in Schedule 5 to the 2006 Act occurs, notify the football banning orders authority(b) of the prescribed information as defined in that Schedule in relation to that event within 7 days beginning with the day on which the event occurs;

[4. surrender his [*or her*] passport in accordance with Chapter 1 of Part 2 of the 2006 Act in connection with regulated football matches outside the United Kingdom;]

[5. (*set out in numbered paragraphs any additional requirements imposed by the court*)]

Signed

Clerk of Court

(a) “Regulated football matches” is defined in section 55 of the 2006 Act.

(b) “football banning orders authority” is defined in section 69 of the 2006 Act.

Form of petition for variation or termination of football banning order

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, THE LORD JUSTICE CLERK, and THE LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF OF *(name of sheriffdom)*]

AT *(place)*

PETITION

of

[A.B] *(address)*

PETITIONER

HUMBLY SHEWETH:

1. That there is annexed to this petition a copy of the football banning order which was made by the sheriff at *(place)* [or by the High Court sitting at *(place)*] on *(date)*.
- [2. That the football banning order has been varied as follows:- *(specify details of any previous variation)*.]
3. That the petitioner seeks to vary [or terminate] the football banning order for the following reasons:- *(here state reasons)*.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S]:

- (1) to appoint intimation of this petition to be made to *(specify person)*;
- (2) to appoint parties to be heard thereon on the earliest practicable date thereafter;
- (3) to appoint intimation of the hearing to be made to *(specify persons)*; and
- (4) thereafter, on being duly satisfied, to make an order varying [or terminating] the football banning order [by] *(here state the terms of the variation sought)* and to do further and otherwise as to your Lordship[s] [or to the court] shall seem proper.

ACCORDING TO JUSTICE, etc.

(Signed)

Petitioner

[or

[Solicitor for Petitioner]

(address, e-mail address and telephone number of solicitor)

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal makes miscellaneous amendments to the Criminal Procedure Rules 1996 (“the Rules”).

Paragraph 2(2) amends the procedure in rule 20.3A with regard to the provision of notice of the notification requirements under the Sexual Offences Act 2003 in cases where sentence is deferred.

Paragraph 2(3) to (5) amends Chapter 31 of the Rules to provide for issues relating to references to the European Court of Justice to be considered at the preliminary hearing or first diet.

Paragraph 2(6) amends rule 41.3 in relation to the provision of notice by a party seeking a declaration of incompatibility under the Human Rights Act 1998.

Paragraph 2(7) introduces a new Chapter 50 into the Rules which makes provision for the form of football banning order and for applications for variation and termination of football banning orders under the Police, Public Order and Criminal Justice Act 2006.

Paragraph 2(8) makes related amendments to the forms set out in the appendix to the Rules.

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